

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON
 PORTLAND DIVISION

MENTOR GRAPHICS CORPORATION,)	
an Oregon corporation,)	
)	
Plaintiff,)	No. CV-10-954-HU
)	
v.)	
)	
EVE-USA, INC., a Delaware)	
Corporation, and EMULATION AND))	
VERIFICATION ENGINEERING,)	ORDER
S.A., formed under the laws of))	
France,)	
)	
Defendants.)	
_____)	

HUBEL, Magistrate Judge:

In this patent infringement action, defendants EVE-USA and EVE-SA, move to stay discovery pending resolution of their motion to dismiss for lack of personal jurisdiction, or alternative motion to transfer. I grant the motion in part and deny it in part.

In its response to the motion to stay, plaintiff has agreed to stay all but jurisdictional discovery pending resolution of defendants' pending motion to dismiss or transfer. Thus, with regard to merits discovery, defendants' motion is granted.

1 Also in response to the motion to stay, plaintiff has narrowed
2 its requested jurisdictional discovery to one interrogatory, five
3 requests for production of documents, and four topics for
4 deposition, for each of the defendants. Sapoznikow Declr. at ¶ 10.
5 I deny defendants' motion as to these limited jurisdictional
6 discovery requests.¹

7 District courts have discretion in determining whether to
8 permit jurisdictional discovery. Boschetto v. Hansing, 539 F.3d
9 1011, 1020 (9th Cir. 2008), cert. denied, 129 S. Ct. 1318 (2009).
10 A court abuses its discretion if there is a clear showing "that
11 denial of discovery results in actual and substantial prejudice to
12 the complaining litigant. Discovery may be appropriately granted
13 where pertinent facts bearing on the question of jurisdiction are
14 controverted or where a more satisfactory showing of the facts is
15 necessary." Id. (internal quotation omitted). However, "where a
16 plaintiff's claim of personal jurisdiction appears to be both
17 attenuated and based on bare allegations in the face of specific
18 denials made by the defendants, the Court need not permit even
19 limited discovery." Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1160
20 (9th Cir. 2006) (internal quotation omitted); see also Boschetto,
21 539 F.3d at 1020 (denial of the plaintiff's request for discovery,
22 "which was based on little more than a hunch that it might yield
23 jurisdictionally relevant facts, was not an abuse of discretion.").

24
25 ¹ At oral argument on the motion to stay discovery,
26 plaintiff's counsel recited a slightly different list of limited
27 jurisdictional discovery requests: two interrogatories, five
28 requests for production of documents, and one corporate
deposition, for each defendant. The Court assumes the parties
will resolve the discrepancy during the parties' discovery
scheduling discussion.

1 Plaintiff cites to a District of Arizona case for the
2 proposition that "[a]lthough some courts require that a plaintiff
3 make a prima facie showing of jurisdiction prior to a court
4 allowing a party to conduct discovery, the Ninth Circuit does not."
5 Seaboard Sur. Co. v. Grupo Mexico, S.A., No. 06-0134, 2006 U.S.
6 Dist. LEXIS 31068, at *7 (D. Ariz. May 12, 2006). In support, the
7 District of Arizona court cited cases from the Southern District of
8 California and the District of Idaho. Id. The court, quoting the
9 Southern District of California case, noted that because, in the
10 Ninth Circuit, a plaintiff may withstand a motion to dismiss for
11 lack of personal jurisdiction absent an evidentiary hearing by
12 making out a prima facie case of jurisdictional facts, it would be
13 "'counterintuitive to require a plaintiff, prior to conducting
14 discovery, to meet the same burden that would be required in order
15 to defeat a motion to dismiss.'" Id. (quoting Orchid Biosciences,
16 Inc. v. St. Louis Univ., 198 F.R.D. 670, 673 (S.D. Cal. 2001))
17 (emphasis in Orchid Biosciences).

18 Rather than requiring a prima facie showing to justify
19 jurisdictional discovery, plaintiff argues that only a "colorable
20 basis of personal jurisdiction" is necessary. In support,
21 plaintiff cites to a 2007 Central District of California case,
22 Mitan v. Feeney, 497 F. Supp. 2d 1113, 1119 (C.D. Cal. 2007) ("In
23 order to obtain discovery on jurisdictional facts, the plaintiff
24 must at least make a 'colorable' showing that the Court can
25 exercise personal jurisdiction over the defendant.").

26 Defendants here criticize plaintiff's reliance on this
27 citation because the Mitan court cited a Seventh Circuit case, not
28 a Ninth Circuit case, in support of its "colorable" standard.

1 Mitan, 497 F. Supp. at 1119 (citing Central States, S.E. & S.W.
2 Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 946
3 (7th Cir. 2000)). However, the Mitan court also cited to eMag
4 Solutions, LLC v. Toda Kogyo Corp., 2006 WL 3783548, at *2 (N.D.
5 Cal. Dec.21, 2006), which in turn explained that "[a]lthough the
6 Ninth Circuit has not ruled directly on this question, . . . other
7 circuits have held that a plaintiff is not entitled to discovery
8 without making a colorable or prima facie showing of personal
9 jurisdiction." (citing cases; footnote omitted). The eMag court
10 then cited Orchid Biosciences for the proposition that it would be
11 "counterintuitive" to require a prima facie showing in order to
12 obtain discovery to be used to make a prima facie showing to defeat
13 a pending motion to dismiss. eMag, 2006 WL 2783548, at *2. The
14 eMag court explained that it found "the reasoning of the Orchid
15 Biosciences court to be persuasive" and that in "the absence of any
16 definitive Ninth Circuit authority," the court had "discretion to
17 permit limited jurisdictional discovery without a full prima facie
18 showing of personal jurisdiction by the plaintiffs." Id.

19 Thus, Mitan, the case relied on by plaintiff for the
20 "colorable" argument, did not rely solely on a Seventh Circuit case
21 but instead, cited to other district court cases within the Ninth
22 Circuit which supported its holding. Importantly, defendants here
23 cite to no Ninth Circuit authority expressly holding that a prima
24 facie showing of personal jurisdiction is required to justify
25 jurisdictional discovery. I agree that the reasoning in Orchid
26 Biosciences makes the most sense.

27 Plaintiff articulates more than an attenuated basis for
28 personal jurisdiction and puts forth more than "bare allegations."

1 Plaintiff relies on the Declaration of John Mawer, an employee of
2 plaintiff's whose duties include the marketing, sales, and support
3 of plaintiff's Veloce emulators. He discusses emulators generally
4 and explains how they are installed and the process of negotiating
5 a sale. He notes it takes months to negotiate the sale, and he
6 describes the requirements of a technical evaluation. He also
7 discusses facts he learned in April and June 2010 regarding the
8 parties' "common customer's" intended use of the product at issue.
9 This is a sufficient "colorable" showing of personal jurisdiction
10 to justify the limited jurisdictional discovery is seeks.

11 Plaintiff indicated at oral argument that it relies on the
12 declaration of its own employee because defendants maintain non-
13 disclosure agreements with their customers. Defendants argued that
14 assuming plaintiff was correct in its representation regarding such
15 agreements, plaintiff was nonetheless required to attempt to obtain
16 jurisdictional facts before filing the case and to plead its
17 inability to obtain the relevant information in the Complaint
18 should defendants refuse to provide it. However, I note that the
19 logical inference of defendants' motion to stay discovery is that
20 any pre-filing inquiry by plaintiff to defendants or its Oregon
21 customer regarding an impending sale of the product by defendants
22 to the customer, would have been met with resistance. This further
23 supports plaintiff's right to the limited jurisdictional discovery
24 it now seeks.

25 Finally, at oral argument defendants noted that there are
26 several specific facts regarding an offer to sell that are required
27 to establish personal jurisdiction in an offer to sell infringement
28 claim. It is reasonable to allow plaintiff to obtain limited

1 jurisdictional discovery on these issues.

2 CONCLUSION

3 Defendants' motion to stay discovery [25] is granted in part
4 and denied in part.

5 IT IS SO ORDERED.

6 Dated this 15th day of December, 2010.

7
8 /s/ Dennis J. Hubel

9
10 Dennis James Hubel
United States Magistrate Judge